

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ATLANTIC RICHFIELD
COMPANY, INC.,

Defendant.

CASE NO. 2:04cv01028 BSS (D. Utah)

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106, 107, and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. §§ 9606, 9607, and 9613, against the Atlantic Richfield Company (the “Settling Defendant” or “AR”).

B. The United States in its complaint seeks, among other things, reimbursement of costs incurred by EPA and the United States Department of Justice (“DOJ”) for response actions at the Eureka Mills Superfund Site (“Site”), located in Juab County, Utah, together with accrued interest and performance of response work by the Settling Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300, as amended, (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Utah (“State”) on July 7, 2003 of negotiations with potentially responsible parties regarding the implementation of the remedial action for the Site. The State participated in settlement negotiations but is not a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior trustee for natural resources at the Site on February 13, 2003 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and

encouraged the trustee(s) to participate in the negotiation of this Consent Decree. The U.S. Department of Interior declined to participate in settlement negotiations.

E. By entering into this Consent Decree, the Settling Defendant does not admit any liability arising out of the transactions or occurrences that were alleged, or could have been alleged, in the Federal complaint in the above captioned action nor does it admit or acknowledge that a release or threatened release of hazardous substances at or from the Eureka Mills Site has occurred or, alternatively that any such release constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 5, 2002. See, 67 Fed. Reg. 56757 (Sept. 5, 2002).

G. To study and undertake response activities in phases, EPA divided the Site into Operable Units. The operable units for the Site are OU 00 - Sitewide (includes residential areas); OU 01 - East Eureka (Godiva and May Day Mines); OU 02 - West Eureka (Bullion Beck and Gemini Mines); OU 03 - Central Eureka (certain Chief mining property); and OU 04 - Groundwater, Surface Water and Ecological Risks.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, from January 2001 to July 2002, EPA conducted a Remedial

Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. EPA completed an RI/FS for the Site on July 23, 2002.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial actions on July 23, 2002, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action and held a public meeting to discuss the plan. A copy of the transcript of the public meeting is available as part of the administrative record upon which EPA based the selection of the response action. The administrative record for the Site is located at the EPA Region 8 Superfund Records Center, 999 18th Street, Suite 300, Denver, Colorado 80202 and at Eureka City Hall, 15 North Church Street, Eureka, Utah.

J. The decision by EPA on the remedial action to be implemented for lead contaminated soils at Operable Units 00 through 03 of the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2002, on which the State has given its concurrence. The ROD includes responsiveness summaries to the public comments. Notice of the selected remedial action was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617, on October 18, 2002, in The Eureka Reporter.

K. On May 28, 2003, EPA issued an Administrative Order for Remedial Action to Settling Defendant in EPA Docket No. CERCLA-08-2003-0007 ("Order"). The Order was

issued to Settling Defendant by EPA under the authority vested in the President of the United States by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The Order directed Settling Defendant to implement the remedial design prepared by the EPA for the remedy described in the ROD for Operable Units No. 00, 01 and 03. On March 23, 2004, EPA issued an amendment to the May 28, 2003 Order ("Amended Order"). EPA approved and Settling Defendant has performed certain response actions at the Site pursuant to the Order and Amended Order.

L. Based on the information presently available, EPA and the State believe that the Remedial Action and the Work described in this Consent Decree will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its Appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by EPA in the ROD and the Work to be performed by the Settling Defendant under the Order, Amended Order, and this Consent Decree shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Subject to Paragraph 103, *infra.*, the Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendant's responsibilities under this Consent Decree.

3. The Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the Settling Defendant with respect to the Site or the Work and shall

condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“AR” shall mean the Atlantic Richfield Company, its divisions, subsidiaries, and predecessors in interest.

“Bill Riley Property” shall mean, for purposes of this Consent Decree, the geographic area located near the intersection of Knightsville Road and Highway 6 as depicted in Appendix A.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Chief Mine No. 2 Response Action Area” shall mean, for purposes of this Consent Decree, the Chief Mine No. 2 mine waste pile as depicted in Appendix A.

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. **“Working day”** shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Section XXVII, Paragraph 96.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Eureka Mills Site Special Account” shall mean the special account established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Future Response Costs” shall mean all costs incurred or to be incurred by the United States, and the State *via* cooperative agreement, in connection with the Site after December 31, 2003, including, but not limited to, direct and indirect costs, costs of oversight, and Interest.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of Interest shall be the rate in effect at the time the interest accrues. The rate of Interest is subject to change on October 1 of each year.

“Knightsville Drainage” shall mean, for purposes of this Consent Decree, the drainage control system consisting of two sediment ponds connected by an open channel and an underground culvert with flow gates to convey storm flows from the northern most sediment pond to Upper Eureka Gulch on the north side of Highway 6 as depicted in Appendix A.

“Mammoth Well” shall mean, for purposes of this Consent Decree, a new well drilled by the Settling Defendant in 2003 on property owned by Spenst Hansen, located near Tintic Junction, approximately 3 miles west of Eureka.

“Matters Addressed” in this settlement shall mean all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site.

“May Day/Godiva Response Action Area” shall mean, for purposes of this Consent Decree, the May Day and Godiva mine waste piles as depicted in Appendix A.

“National Contingency Plan” or **“NCP”** shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Newman Tract Response Action Area” shall mean, for purposes of this Consent Decree, the geographic area located near the intersection of Knightsville Road and Highway 6 as depicted in Appendix A.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendant.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs and costs of oversight, that the United States paid at or incurred in connection with the Site through December 31, 2003, including State costs via cooperative agreement

expenditures, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through December 31, 2003.

“Performance Standards” shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD and the Remedial Action Work Plan, that the Remedial Action must attain and maintain.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or **“ROD”** shall mean the EPA’s September 30, 2002

“Lead-Contaminated Soils ROD” and all attachments thereto which selects a remedial action for the long-term cleanup of the Site. The remedial action selected involves four components: (1) continued cleanup of lead-contaminated soils in residential yards; (2) cleanup of mine waste piles and other non-residential areas; (3) a continuation of the public health actions initiated under the Early Interim Action ROD; and (4) institutional controls. The ROD is attached hereto at Appendix B.

“Remedial Action” shall mean those activities to be undertaken by Settling Defendant to implement the ROD and the Remedial Action Work Plan for the May Day/Godiva Response Action Area and the Chief Mine No. 2 Response Action Area. “Remedial Action” shall also

include those activities to be undertaken by Settling Defendant pursuant to the Statement of Work attached hereto to complete the specified Work relating to the Secondary Water System and the Knightsville Drainage including the remediation of the Bill Riley Property and realignment of Knightsville Road. "Remedial Action" shall not include operation and maintenance or institutional controls as set forth in the Remedial Action Work Plan. The areas subject to Remedial Action under this Consent Decree are specifically identified in Appendices A and C.

"Remedial Action Work Plan" or **"RAWP"** shall mean the work plan for implementation of the Remedial Action, Operation and Maintenance and Institutional Controls for Operable Units 00, 01, 02 and 03 at the Site, approved by EPA in May 2003 and amended in February 2004, and any amendments thereto. The RAWP is incorporated into this Consent Decree by reference and is an enforceable part of this Consent Decree insofar as it relates to the Remedial Action as that term is defined by this Consent Decree.

"Secondary Water System" shall mean, for purposes of this Consent Decree, an additional water source other than water provided by the City of Eureka municipal water system to be used for construction purposes consisting of the following infrastructure: a new well referred to as the "Mammoth Well" drilled by the Settling Defendant in 2003 and fitted with a high-capacity pump; an abandoned well 30 feet from the Mammoth Well that has been converted to a piezometer to monitor drawdowns in the Mammoth Well during pumping; a temporary pipeline installed by the Settling Defendant in 2003 to convey the water from the well to the Site

during construction; and a water storage pond constructed by the Settling Defendant on the top of the Chief Mine No. 1 mine waste pile. The location of the water storage pond on the Chief Mine No. 1 mine waste pile is depicted in Appendix C.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean AR as defined above.

“Site” shall mean the Eureka Mills National Priority List Site, located approximately 80 miles southwest of Salt Lake City and encompassing the City of Eureka and adjacent unincorporated areas of Juab County, Utah. The Site boundaries are generally depicted in Appendix D.

“State” shall mean the State of Utah, including all of its departments, agencies, and instrumentalities.

“Statement of Work” or **“SOW”** shall mean the statement of work for implementation of the Remedial Action at the Site, as set forth in Appendix E to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

“**United States**” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

“**Waste Material**” shall mean: (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous materials” or “hazardous substances” as defined in the Utah Hazardous Substances Mitigation Act, Utah Code Ann., Section 19-6-301, *et seq.*

“**Work**” shall mean all activities Settling Defendant is required to perform under this Consent Decree, including the Remedial Action.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the implementation of the Work by the Settling Defendant, by reimbursing response costs incurred by United States, by resolving the claims which could have been asserted by the Settling Defendant against the United States with regard to the Site, and by resolving the claims among the Parties as provided in this Consent Decree.

6. Commitments by Settling Defendant. Settling Defendant has completed the Work for the Secondary Water System and the Mammoth Well and a portion of the Work for the

Knightsville Drainage under the Order and Amended Order. Settling Defendant shall complete certain portions of the Work at the Secondary Water System and the Knightsville Drainage as described in the SOW and specified in the RAWP and shall complete all Work specified in the RAWP except operation and maintenance and implementation of institutional controls for the May Day/Godiva Response Action Area and the Chief Mine No.2 Response Action Area.

Settling Defendant shall finance and perform the Work it is required to perform pursuant to this Consent Decree in accordance with this Consent Decree, the ROD, the RAWP, the SOW, and all other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA. Settling Defendant shall also reimburse the United States for Past and Future Response Costs, including but not limited to Future Response Costs related to the Newman Tract, as provided in this Consent Decree.

7. Compliance With Applicable Law. All Work undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD and the RAWP. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Remedial Action conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Remedial Action). Where any portion of the Remedial Action that is not on-site requires a Federal or State permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Remedial Action resulting from a failure to obtain, or a delay in obtaining, any permit required for the Remedial Action.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

9. Supervising Contractor.

a. All aspects of the Remedial Action to be performed by the Settling Defendant pursuant to this Consent Decree shall be under the direction and supervision of the

Supervising Contractors. Prior to the lodging of this Consent Decree, the Settling Defendant provided EPA with information sufficient to demonstrate the qualifications of Anderson Engineering and Flare Construction Inc. who will direct or supervise the Work as AR's Supervising Contractors. If, at any time after lodging of the Consent Decree, the Settling Defendant proposes to change a Supervising Contractor, the Settling Defendant shall notify EPA and the State in writing of the name, title, and qualifications of each contractor or Settling Defendant employee proposed as one of the Supervising Contractors and shall obtain an authorization to proceed from EPA, before the new Supervising Contractor performs, directs, or supervises any Remedial Action under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the State and Settling Defendant in writing. The Settling Defendant shall submit to EPA and the State a list of contractors or Settling Defendant employees, including the qualifications of each contractor or Settling Defendant employee, that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide to Settling Defendant and the State written notice of the names of any contractor(s) and Settling Defendant's employee(s) that it disapproves and an authorization to proceed with respect to any of the other contractors or Settling Defendant's employees. Settling Defendant may select any contractor or Settling Defendant employee(s) from that list that is not disapproved and shall notify EPA and the State of the name of the contractor or Settling Defendant's employee(s) selected within twenty-one (21) days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure).

10. Modification of the Statement of Work and Remedial Action Work Plan.

a. If EPA, after a reasonable opportunity for review and comment by the State, determines that modification to the Statement of Work and RAWP are necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may make such modification, provided, however, a modification may only be made pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD. For the purposes of Paragraph 10, the “scope of the remedy selected in the ROD” means the protection of human health or the environment through the implementation of remedial measures at the portions of the Site addressed by Remedial Action which include: (1) the excavation and removal or consolidation of contaminated soil and mine wastes; (2) the replacement or covering of such soils or mine wastes with borrow materials; and (3) the construction or improvement of access roads, drainages, ditches, and sedimentation ponds.

b. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX

(Dispute Resolution). The Statement of Work and the RAWP shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement the modified Statement of Work in accordance with the RAWP, including any modifications incorporated in the RAWP.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

11. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, RAWP, or SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the Consent Decree, RAWP, or SOW will achieve the Performance Standards.

12. Settling Defendant shall, prior to any off-site shipment of Waste Material that is generated by the Work to a waste management facility, provide written notification to the appropriate State environmental official in the receiving facility's state and to the EPA Project Coordinator and the State Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 100 cubic yards or 1,000 gallons. Nothing in this Paragraph is intended to, nor shall it, relieve the Settling Defendant of its obligations to comply with waste shipment notification and reporting requirements under state or federal law.

a. Settling Defendant shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Defendant shall notify EPA, the State, and the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Settling Defendant following the award of the contract for any such necessary action. Settling Defendant shall provide the information required by Paragraph 12 a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

13. EPA Selection of Further Response Actions. If EPA determines at any time, after a reasonable opportunity for review and comment by the State, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the portion of the Site addressed by Remedial Action in accordance with the requirements of CERCLA and the NCP.

14. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on

any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

15. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the portion of the Site to be addressed by the Remedial Action, the Settling Defendant shall undertake such further response actions to the extent that the reopener conditions in Paragraph 73 or Paragraph 74 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 73 or Paragraph 74 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 57 (record review).

16. Submissions of Plans. If Settling Defendant is required to perform further response actions pursuant to Paragraph 15, it shall submit a plan for such work to EPA and the State for approval by EPA in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA after a reasonable opportunity for review by the State in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

17. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all samples as specified in the "Quality Control Plan" set forth in the RAWP, Volume IV. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the Quality Control Plan shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Control Plan for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree. However, upon approval by EPA after opportunity for review and comment by the State, the Settling Defendant may use other analytical methods which are as stringent as or more stringent than the Contract Lab Program ("CLP") approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality

assurance/quality control ("QA/QC") program. Settling Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in EPA's Quality Control Plan.

18. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendant shall notify EPA and the State not less than 10 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Settling Defendant to take split or duplicate samples of any samples they takes as part of EPA's and the State's oversight of the Settling Defendant's implementation of the Work.

19. Settling Defendant shall submit to EPA and the State one copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant

with respect to the Site and/or the implementation of this Consent Decree unless EPA and the State agree otherwise.

20. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS

21. If the Site, or any other property where access is needed to implement this Consent Decree, is owned or controlled by persons other than the Settling Defendant, Settling Defendant shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Defendant, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree. The duty to determine property ownership is the responsibility of the Settling Defendant. Property boundaries contained in the RAWP are based primarily on public information that was available at the time of the RAWP development and are not to be relied upon as a representation of the legal property boundaries.

22. For purposes of Paragraph 21 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access agreements required by Paragraph 21 of this Consent Decree are not obtained within forty-five (45) days of

the date of entry of this Consent Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 21 of this Consent Decree. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall not object to or impede EPA's or the State's efforts to secure such governmental controls.

23. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access in the form of contractual agreements. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI (Payments For Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

24. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

25. In addition to any other requirement of this Consent Decree, Settling Defendant shall prepare and submit to EPA and the State by electronic mail monthly progress reports that:

(a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of every month following the Effective Date of this Consent Decree until EPA certifies that the Remedial Action is complete, pursuant to Paragraph 43.b. of Section XIV (Certification of Completion). If

requested by EPA or the State, Settling Defendant shall also provide briefings for EPA and the State to discuss the progress of the Work.

26. The Settling Defendant shall notify EPA and the State of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the date the performance of the activity is due.

27. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendant shall, within 24 hours of the onset of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 8, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

28. Within twenty (20) days of the onset of such an event, Settling Defendant shall furnish to EPA and the State by first class and electronic mail, a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of

such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

29. Settling Defendant shall submit copies of all plans, reports, and data required by the SOW, the RAWP, or any other approved plans to EPA and the State in accordance with the schedules set forth in such plans. Settling Defendant shall submit in electronic form all portions of any report or other deliverable Settling Defendant is required to submit pursuant to the provisions of this Consent Decree. All reports exceeding fifty (50) pages in length and final reports shall also be submitted in hard copy format.

30. All reports and other documents submitted by Settling Defendant to EPA and the State (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

31. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a

submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within fifteen (15) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

32. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 31, Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 31(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

33. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 31(d), Settling Defendant shall, within fifteen (15) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX (Stipulated Penalties), shall accrue during the fifteen (15) day period or otherwise specified period but shall

not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 34 and 35.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 31(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

34. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIX (Dispute Resolution).

35. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX

(Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during dispute resolution.

36. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

37. Settling Defendant, the State, and EPA have already designated their respective Project Coordinators and Alternative Project Coordinators for the Site, the names addresses and telephone numbers of which are noted in Section XXVI (Notices and Submissions). If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Any successor to the Settling Defendant's Project Coordinator and Alternate Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for the Settling Defendant in this matter. He or she may assign other representatives,

including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

38. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and Federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to the release or threatened release of Waste Material.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

39. EPA has assessed the value of the work to be performed by AR to be \$6,100,000. Within thirty (30) days of entry of the Effective Date of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount equal to the value of the uncompleted work as of the date of lodging of this Consent Decree in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations, subsidiaries, or affiliate, or by one or more unrelated corporations that have a substantial business relationship with the Settling Defendant; or
- e. A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. § 264.143(f).

40. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 39 d. of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 39 d. or 39 e., it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 39 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

41. If Settling Defendant can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 39 above after the Effective Date

of this Consent Decree, Settling Defendant may at any time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Settling Defendant shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

42. Settling Defendant may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

43. Completion of the Remedial Action.

a. Within ninety (90) days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall schedule and conduct a pre-certification inspection to be attended by EPA and the State. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall

submit a written final report ("Final Report") prepared by a registered professional engineer requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. The Final Report shall be submitted electronically and in hard copy format. In the Final Report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written Final Report shall include as-built drawings signed and stamped by a professional engineer. The Final Report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written Final Report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities

are consistent with the “scope of the remedy selected in the ROD,” as that term is defined in Paragraph 10 a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendant’s remaining obligations under this Consent Decree.

XV. EMERGENCY RESPONSE

44. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency

situation or that may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 45, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response Program, Region 8. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

45. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

46. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$15,964.00 in payment for Past and Future Response Costs. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2004Z00639, EPA Site/Spill ID # 08-CF, and DOJ Case Number 90-11-3-07993/1. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the District of Utah following the Effective Date of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

a. At the time of payment under Paragraph 46, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

b. The total amount to be paid by Settling Defendant pursuant to Paragraph 46 shall be deposited in the Eureka Mills Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

c. In the event that the payments required by Paragraph 46 are not made within thirty (30) days from the Effective Date, Settling Defendant shall pay Interest on the

unpaid balance. The Interest to be paid under this Paragraph shall begin to accrue on the Effective Date and continue to accrue through the date of the Settling Defendant's full payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX of this Decree (Stipulated Penalties).

XVII. INDEMNIFICATION AND INSURANCE

47. Settling Defendant's Indemnification of the United States.

a. The United States does not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other

expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 47a., and shall consult with Settling Defendant prior to settling such claim.

48. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

49. Prior to the lodging of this Consent Decree, Settling Defendant provided the United States with information that satisfied the United States as to Settling Defendant's financial resources and its ability to provide the equivalent of comprehensive general liability insurance with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, until Certification of Completion pursuant to Section XIV above, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Until Certification of Completion pursuant to Section XIV above, Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only assurance for the equivalent of that portion of the insurance described above which is not maintained by the contractor or subcontractor. The United States shall be named as additional insureds on contractor and subcontractor insurance.

XVIII. FORCE MAJEURE

50. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant’s best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force Majeure does not include financial inability to complete the Work or a failure to attain the Performance Standards.

51. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the Settling Defendant shall notify orally EPA’s Project Coordinator or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund Remedial Response Program, Office of Ecosystems Protection and Remediation, EPA Region 8, within twenty-four (24) hours of when Settling Defendant first knew that the event might cause a delay. Within seven (7) days thereafter, Settling Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken

to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

52. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be

caused by a Force Majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a Force Majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

53. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 50 - 52, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

54. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section

shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

55. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

56. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 57 or Paragraph 58.

b. Within thirty (30) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not

limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 57 or 58. Within thirty (30) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 57 or 58, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 57 and 58.

57. *Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.*

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 57a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 57c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 57b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation, EPA Region 8 is

arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 57a.

58. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 56, the Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final decision resolving the dispute. The Assistant Regional Administrator's decision shall be binding on the Settling Defendant unless, within ten (10) days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

59. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this

Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

60. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 61 and 62 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure).

“Compliance” by Settling Defendant shall include completion of the Work under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, RAWP, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

61. Stipulated Penalty Amounts - Tier 1.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 61b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1st through 14th day
\$5,500	15th through 30th day
\$7,500	31st day and beyond

b. Compliance Milestones. Failure to comply with any of the requirements in Section VI (Performance of the Work by Settling Defendant), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section IX (Access), Section XIII (Assurance of Ability to Complete the Work), Section XV (Emergency Response), and Section XVI (Payment for Response Costs).

62. Stipulated Penalty Amounts - Tier 2.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 62.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$3,500	15th through 30th day
\$5,000	31st day and beyond

b. Compliance Milestones. Failure to comply with any of the requirements in Section X (Reporting Requirements), Section XI (EPA Approval of Plans and Other Submissions), Section XII (Project Coordinators), Section XIV (Certification of Completion), Section XVII (Indemnification and Insurance), Section XXIV (Access to Information), Section

XXV (Retention of Records), Section XXVI (Notices and Submissions), and Section XXX (Community Relations).

63. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 77 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$100,000.00.

64. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, under Paragraph 57b. or 58a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Assistant Regional Administrator issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding

such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

65. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

66. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be made payable to "U.S. EPA," shall indicate that the payment is for stipulated penalties and forwarded to one of the following addresses:

Regular Mail: Mellon Bank

Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Overnight Mail:

U.S. EPA, 360859
Mellon Client Service Center Rm 670

500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004

TREAS NYC/CTR/

BNF=/AC-68011008

Payments shall reference the EPA Region and Site/Spill ID #08-CF, the DOJ Case Number 90-11-3-07993/1, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

67. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

68. Penalties shall continue to accrue as provided in Paragraph 64 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be

owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

69. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 66.

70. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, provided, however, that the United States shall not seek civil penalties

pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

71. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

72. United States' Covenant Not To Sue. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 73, 74, and 76 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Sections 3004(u) and (v), 3008 and 7003 of RCRA relating to the Site. This covenant extends to Settling Defendant's officers, directors, and employees but only to the extent that the liability of those officers, directors and employees arises: (a) solely from their status as such; and (b) from the same nucleus of facts that gave rise to Settling Defendant's liability resolved under this Consent Decree. The foregoing covenant also extends to Settling Defendant's successors-in-interest and affiliates but only to the extent that the liability of those entities arises: (a) solely from their status as such; and (b) from the same nucleus of facts that gave rise to Settling Defendant's alleged liability which is resolved under Matters Addressed in this Consent Decree. Except with respect to future liability, these

covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 46 of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 43b. of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant, and its officers, directors, and employees, to the extent that the liability of such officers, directors and employees arises solely from their status as officers, directors, and employees, and do not extend to any other person.

73. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant to perform further response actions relating to the portions of the Site addressed by the Remedial Action, or to reimburse the United States for additional costs of response relating to the portions of the Site addressed by the Remedial Action if, prior to Certification of Completion of the Remedial Action:

- a. conditions at the Site, previously unknown to EPA, are discovered, or
- b. information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any

other relevant information indicates that the Remedial Action is not protective of human health or the environment.

74. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant to perform further response actions relating to the portions of the Site addressed by the Remedial Action, or to reimburse the United States for additional costs of response relating to the portions of the Site addressed by the Remedial Action if, subsequent to Certification of Completion of the Remedial Action:

- a. conditions at the Site, previously unknown to EPA, are discovered, or
- b. information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

75. For purposes of Paragraph 73, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree pursuant to Paragraph 103, *infra.*, as contained in: (a) the Record of Decision for the Site; (b) the administrative record supporting the Record of Decision; or (c) EPA's site file for the Eureka Mills Site. For purposes of Paragraph 74, the information and the

conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and contained in: (a) the Record of Decision for the Site; (b) the administrative record supporting the Record of Decision; (c) the post-Record of Decision administrative record; (d) EPA's site file for the Eureka Mills Site; or (e) in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

76. United States' General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the United States' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendant's ownership or operation of the Site, or upon the Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in

connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendant;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions for the portions of the Site addressed by the Remedial Action that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 10 (Modification of the Statement of Work and Remedial Action Work Plan).

77. Work Takeover. In the event EPA determines that Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 57, to dispute EPA's

determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be paid as set forth in the following Subparagraphs.

- a. Settling Defendant shall pay to EPA all costs of the Work taken over under Paragraph 77 not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendant a bill requiring payment that includes a cost summary. Settling Defendant shall make all payments in accordance with the payment instructions in Paragraph 46 within thirty (30) days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 77 b.
- b. Settling Defendant may contest payment required under Paragraph 77 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the thirty (30) day period pay all uncontested costs to the United States in the manner described in Paragraph 46. Simultaneously, the Settling Defendant shall establish an interest-bearing escrow account in a federally-insured

bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested costs. The Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 46. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 46. Any remaining balance in the escrow account shall be disbursed to the Settling Defendant. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding

the Settling Defendant's obligation to reimburse the United States costs attributable for Work taken over.

- c. In the event that the payments required by Subparagraph 77 a. are not made within thirty (30) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest on the costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to perform the Work or make timely payments under this Paragraph including, but not limited to, payment of stipulated penalties pursuant to Section XX (Stipulated Penalties). The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 46.

78. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS AND RESERVATIONS BY SETTLING DEFENDANT

79. Covenant Not to Sue. Subject to the reservations in Paragraph 81, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action

against the United States with respect to the Site or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, 113 of CERCLA or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under Sections 107 or 113 of CERCLA related to the Site; or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

80. These covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 73 through 76 but only to the extent that Settling Defendant's claims arise from the same matters, transactions, or occurrences that are raised in or directly related to the United States' claims against Settling Defendant.

81. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death

caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

82. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

83. Waiver of Claims Against De Micromis Parties. Settling Defendant agrees not to assert any claims and to waive all CERCLA and RCRA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did

not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

a. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver shall be void to the extent that the United States institutes a new action, or issues a new administrative order to Settling Defendants pursuant to the reservations contained in Paragraphs 73, 74, or 76 of this Consent Decree. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

84. Except as provided in Paragraph 83 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 83 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes

of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

85. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2), 42 U.S.C. § 9613(f)(2) of CERCLA for Matters Addressed in this Consent Decree. The Matters Addressed in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The Matters Addressed in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

86. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

87. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify in writing the United States and the State within ten (10) days of service of the complaint on it. In addition,

Settling Defendant shall notify the United States and the State within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

88. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

89. Subject to the assertion of privilege claims in accordance with Paragraph 90, Settling Defendant shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA and the State, for purposes of investigation,

information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work subject to their right to counsel or any other right under State and Federal law.

90. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and

recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

91. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

92. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 43b. of Section XIV (Certification of Completion), Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its potential liability under CERCLA with respect to the Site. Settling Defendant must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant shall also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or

which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that the Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

93. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents which are not privileged to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no final documents, final reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

94. The Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise

disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

95. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07993/1

As to EPA:

Paula Schmittiel, RPM

United States Environmental Protection Agency - Region 8

999 18th Street, Suite 300

Denver, CO 80202-2466

Phone: 303-312-6861

e-mail: schmittiel.paula@epa.gov

Jude Hobza, PE (EPA's On-site Representative)

United States Army Corps of Engineers - Rapid Response

P.O. Box 13287

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Offutt AFB, NE 68113

Phone: 402-293-2530

e-mail: jude.t.hobza@usace.army.mil

Joe Shields, P.E.

HDR Engineering, Inc.

8404 Indian Hills Drive

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e-mail: jshields@hdrinc.com

As to the Regional Financial Management Officer:

Martha Walker

EPA Finance Officer

United States Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466
e-mail: walker.martha@epa.gov

As to the State:

Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144840
Salt Lake City, Utah 84114-4840

With copy to:

Eureka Mills Superfund Site Project Manager
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
168 North 1950 West
P.O. Box 144840
Salt Lake City, Utah 84114-4840

As to the Settling Defendant:

Pamela Kaye
Project Coordinator
Atlantic Richfield Company
317 Anaconda Road
Butte, MT 59701
Robin Bullock

Alternate Project Coordinator
317 Anaconda Road
Butte, MT 59701
Sheila D'Cruz
4101 Winfield Road
Mail Code 4 West
Warrenville, IL 60555

XXVII. EFFECTIVE DATE

96. The effective date of this Consent Decree shall be sixty (60) days from the date upon which it is entered by this District Court, unless an appeal of the entry and judgment is filed during the sixty (60) day period. If an appeal is taken, the effective date shall mean the date, if any, on which this District Court's judgment is affirmed.

XXVIII. RETENTION OF JURISDICTION

97. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

98. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is a map of the Chief Mine No. 2, and Mayday/Godiva Response Action Areas, the Knightsville Drainage, Newman Tract, Knightsville Road Realignment, and the Bill Riley Property.

“Appendix B” is the ROD;

“Appendix C” is a map of the Secondary Water System’s Water Storage Pond;

“Appendix D” is the Site map; and

“Appendix E” is the SOW.

XXX. COMMUNITY RELATIONS

99. Settling Defendant shall cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

XXXI. MODIFICATION

100. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendant. All such modifications shall be made in writing.

101. Except as provided in Paragraph 10 (Modification of the Statement of Work and Remedial Action Work Plan), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

102. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

103. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or

considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

104. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

105. Each undersigned representative of the Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

106. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

107. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and

any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

108. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

109. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2004.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. the Atlantic Richfield Company, Civ. No. _____ (D. Utah) relating to the Eureka Mills Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 1/1/04

Signature: _____

JOHN C. CRUDEN

Deputy Assistant Attorney General

Environment and Natural Resources Division

U.S. Department of Justice

Washington, D.C. 20530

Date: 1/1/04

Signature: _____

JOHN N. MOSCATO

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

999 18th Street, Suite 945 N

Denver, CO 80202

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The Atlantic Richfield Company, et al., Civ. No. _____ (D. Utah) relating to the Eureka Mills Superfund Site.

FOR THE U.S. EPA

Date: 10/26/04 Signature: _____


CAROL RUSHIN
Assistant Regional Administrator, Region 8
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202 - 2466

FOR THE ATLANTIC RICHFIELD COMPANY

Date: 10/4/04 Signature: _____


STEPHEN A. ELBERT
Chief Executive
801 Warrenville Road
Suite 800-MC 8015
Lisle, IL 60532

Date: 10/4/04 Signature: _____

SHEILA D'CRUZ, 
Attorney
4101 Winfield Road, Mail Code 4
West, Warrenville, IL 60555

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Date: 10/4/04 Signature: _____

SHEILA D'CRUZ, 
Attorney
4101 Winfield Road, Mail Code 4
West, Warrenville, IL 60555